

Lawrence Brewster
Acting Regional Solicitor
Rochelle Kleinberg, WSB #4723
Associate Regional Solicitor
Faye von Wrangel, WSB #3174
Office of the Solicitor
U.S. Department of Labor
1111 Third Avenue, Suite 945
Seattle, WA 98101-3212
Telephone: (206) 553-0940
Facsimile: (206) 553-2768
kleinberg-rochelle@dol.gov
vonwrangel-faye@dol.gov
Attorneys for Plaintiff

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

DEC 08 2005

at 10 o'clock and 56 min. M
SUE BEITIA, CLERK

LODGED

DEC 02 2005

4:29 pm
CLERK, U.S. DISTRICT COURT
DISTRICT OF HAWAII

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

ELAINE L. CHAO, Secretary of Labor,)
United States Department of Labor,)

Plaintiff,)

vs.)

SMITH MARITIME, Ltd., a)
corporation, and **SMITH**)
TANKERMEN SERVICES, Ltd., a)
corporation, and **GORDON L. K.**)
SMITH, an individual,)

Defendants.)

No.: CV04-00576 DAE KSC

CONSENT JUDGMENT

I

Plaintiff has filed her Complaint and Defendants, Smith Tankermen Services, Ltd., a corporation, and Gordon L.K. Smith, an individual, have appeared and agreed to the entry of this Judgment without contest. It is, therefore, upon motion and direction of the Plaintiff and Defendants that this Consent Judgment be entered as follows:

CONSENT JUDGMENT

IT IS ORDERED, ADJUDGED AND DECREED that Defendants, their officers, agents, servants, employees, and all persons acting or claiming to act in their behalf and interest be, and they hereby are, permanently enjoined and restrained from violating the provisions of Sections 15(a) (2) and 15(a) (5) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et. seq.), hereinafter referred to as the Act, in any of the following manners:

(1) Defendants shall not, contrary to Section 7 of the Act, employ any of their employees engaged in commerce, or in the production of goods for commerce, or in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty (40) hours unless the employee receives compensation for his employment in excess of forty (40) hours at a rate not less than one and one-half times his regular rate at which he is employed.

(2) Defendants shall not fail to make, keep and preserve records of their employees and of the wages, hours and other conditions and practices of employment maintained by them, as prescribed by the regulations of the Administrator of the Wage and Hour Division, United States Department of Labor, issued and from time to time amended, pursuant to Section 11(c) of the Act and found in 29 C.F.R 516.

IT IS FURTHER ORDERED that the Plaintiff recover from the Defendants the sum of sixty thousand dollars (\$60,000.00) in overtime compensation and liquidated damages due their employees, identified on Exhibit "A" for the periods

identified therein, in six monthly installments, with the first installment of twelve thousand dollars (\$12,000.00) due within thirty days of the signing of the Consent Judgment, and the remaining five installments of nine thousand and six hundred dollars (\$9,600.00), plus 1% interest on the declining balance, payable the fifteenth of every month, beginning January 15, 2006, in the form of a cashier check or money order made payable to the order of Wage and Hour Division, U.S. Department of Labor and forwarded to:

U.S. Department of Labor/ESA
 300 Ala Moana Blvd., Room 7-225
 Honolulu, Hawaii 96850
 Attention: Assistant District Director Terence J. Trotter

and shall be accompanied by a letter identifying the case name as Chao v. Smith Tankermen Services, Ltd., and Gordon L.K. Smith, and include the employer's tax identification number.

(b) If there is a default in the receipt of the check by over 15 days, the total amount remaining due from the Defendants will automatically be increased by an additional 20% to be prorated among the employees who remain unpaid.

(c) Plaintiff shall distribute the monies paid by Defendants under this Judgment to the employees identified in Exhibit "A" attached hereto or their estates if that is necessary. Any money not so paid within three (3) years because of inability to locate said employees or because of their refusal to accept said proceeds shall be deposited forthwith with the Treasurer of the United States pursuant to 28. U.S.C. § 2041.

IT IS FURTHER ORDERED that the rights, if any, of Defendants' employees or ex-employees not specifically mentioned in Exhibit A to this Judgment to back wages under the Act are neither affected nor extinguished by this Judgment and neither party to this action intends or contemplates that the Judgment entered in this action will affect such rights, if any, or any defenses available to Defendants; and

IT IS FURTHER ORDERED that each party shall bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding, and shall waive all rights to relief in this case under the Equal Access to Justice Act.

Dated this 8th day of December, 2005.

DAVID ALAN EZRA

United States District Judge

ENTRY OF THIS JUDGMENT
IS HEREBY CONSENTED TO
AND NOTICE OF PRESENTATION
IS WAIVED

Approved as to Form and Content:

TORKILDSON KATZ FONSECA JAFFE
MOORE & HEATHERINGTON

By: Richard M. Rand
Richard M. Rand, Hawaii Bar # 2773-0
Attorney for Defendants

Dated: 12/12/05

SMITH TANKERMAN SERVICES, LTD.,
a corporation,

12/02/05 FRI 16:13 FAX 800 2 1003
Dec-01-05 04:31pm From-Torkildsen, Katz

SMITH MARITIME

608 523 6001

T-572

P.006/007

F-700

008

By: *M. L. K. Smith*Dated: 12-2-05

GORDON L.K. SMITH,
individually

By: *M. L. K. Smith*

GORDON L.K. SMITH

Dated: 12-2-05

PRESENTED BY:

HOWARD M. RADZELY
Solicitor of Labor

LAWRENCE BREWSTER
Acting Regional Solicitor

ROCHELLE KLEINBERG
Associate Regional Solicitor

By: *Faye von Wrangel*

Faye von Wrangel, WSB #3174
Senior Trial Attorney

Dated: November 25, 2005

U.S. DEPARTMENT OF LABOR

CONSENT JUDGMENT

5

EXHIBIT "A"

| <u>EMPLOYEE NAME</u> | <u>PERIOD COVERED</u> | <u>AMOUNT DUE</u> |
|----------------------|--------------------------|---------------------------|
| Alesna, Robin | 10/01/2001 to 04/04/2003 | \$19,099.32 |
| Castro, Larry | 10/01/2001 to 07/04/2003 | 5,872.77 |
| Decosta, William | 10/01/2001 to 04/04/2003 | 4,557.41 |
| Estrada, Hector | 10/01/2001 to 07/15/2004 | 20,915.10 |
| Kawaaauhau, Gabriel | 10/01/2001 to 10/14/2002 | 3,900.40 |
| Thomas, Andrew | 10/01/2001 to 04/04/2003 | 5,775.40 |
| | GRAND TOTAL DUE: | <u>\$60,120.40</u> |